

Department of Veterans Affairs

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transaction now meet any of the criteria in § 44.335.

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

§ 44.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 44.360 What happens if I fail to disclose the information required under § 44.355?

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.

§ 44.365 What must I do if I learn of information required under § 44.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by § 44.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 44.355.

Subpart D—Responsibilities of Department of Veterans Affairs Officials Regarding Transactions

§ 44.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 44.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you ob-

tain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 44.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 44.120.

§ 44.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 44.120.

§ 44.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 44.120.

§ 44.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless

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you obtain an exception under § 44.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 44.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

§ 44.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as an agency official must check the *EPLS* when you take any action listed in § 44.425.

(b) You must review information that a participant gives you, as required by § 44.335, about its status or the status of the principals of a transaction.

§ 44.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 44.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include

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a similar term or condition in lower-tier covered transactions.

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§ 44.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 44.450 What action may I take if a primary tier participant fails to disclose the information required under § 44.335?

If you as an agency official determine that a participant failed to disclose information, as required by § 44.335, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 44.455 What may I do if a lower tier participant fails to disclose the information required under § 44.355 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § 44.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Excluded Parties List System

§ 44.500 What is the purpose of the Excluded Parties List System (EPLS)?

The *EPLS* is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.